

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL W. BRISENO,

**Petitioner,**

No. C 04-1458 PJH

**ORDER REOPENING CASE;  
GRANTING PETITION FOR WRIT  
OF HABEAS CORPUS**

v.

JEANNE S. WOODFORD, Director,  
California Dept. of Corrections,

## Respondent.

This habeas case filed under 28 U.S.C. § 2254 was remanded to this court by the Ninth Circuit on December 20, 2010. The mandate having been filed January 11, 2011, the court grants the petition for writ of habeas corpus as directed by the Ninth Circuit.

19 The Ninth Circuit found that it was ineffective assistance of counsel on the part of  
20 petitioner's trial counsel not to request a certificate of probable cause on the failure of the  
21 trial judge to advise petitioner about the mandatory minimum sentence he faced on each  
22 charge. The Ninth Circuit thus held that the state court's decision summarily denying  
23 petitioner's claim that he was denied effective assistance of counsel in violation of the Sixth  
24 Amendment when his trial counsel failed to request a certificate of probable cause on the  
25 issue of the trial judge's failure to inform Briseno of the mandatory minimum sentences on  
26 the charges, resulted in a decision that was contrary to, or involved an unreasonable  
27 application of, clearly established Federal law, as determined by the Supreme Court of the  
28 United States. 28 U.S.C. § 2254 (d).

1 The Ninth Circuit then remanded this case with instructions that this court “grant the  
2 writ of habeas corpus on the issue reversed and order the [petitioner] released unless he is  
3 afforded an opportunity to appeal that conviction within a reasonable time.”

4 Accordingly, this court grants the petition and orders that respondent release  
5 petitioner from custody unless the state (presumably the California Court of Appeal) affords  
6 the petitioner an opportunity to appeal on the merits (presumably without having first  
7 obtained a certificate of probable cause) his claim that he was denied effective assistance  
8 of counsel in violation of the Sixth Amendment when his trial counsel failed to request a  
9 certificate of probable cause on the issue of the trial judge's failure to inform him of the  
10 mandatory minimum sentences for each charge. This court determines that 90 days is  
11 sufficient to afford petitioner an opportunity to appeal and he shall commence his appeal  
12 within 90 days of the date of this order.

## **IT IS SO ORDERED.**

14 | Dated: January 14, 2011

Pjw

**PHYLLIS J. HAMILTON**  
United States District Judge